IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1004 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SN THAKUR - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR SL VAISHYA for Petitioner(s) : 1,
MS ARCHNA RAVAL, AGP for Respondent(s) : 1 - 2.
RULE SERVED for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 21/04/2006

ORAL JUDGMENT

1.In the present petition, the petitioner has challenged the decision of the respondents to treat the period of 221 days from 08-09-1989 to 16-04-1990 as leave without pay and break in service. The petitioner has also

prayed that respondents be directed to pay the salary for the entire period as if the petitioner was on duty. His salary be released with 24% interest per annum to the extent of delay.

2.The petitioner was at the relevant time discharging his duties as Medical Officer, Class-II. He has retired from service on superannuation. With the intervention of the Court and with some apparent persuasion as can be seen from the orders dated 03-02-2004 and 19-04-2004 passed by the Learned Single Judge of this Court, the respondents have granted the benefits of the period in question for the purpose of pensionary benefits to the petitioner. It is stated by the learned advocate Shri Vaishya for the petitioner that with respect to grievance of the petitioner for the said period of 221 days treated as break in service, therefore, does not survive. The only question that now calls for consideration is whether the petitioner is entitled to receive full pay and allowances for the said period as if the petitioner was in active service.

3.The petitioner when he was discharging his duties as Medical Officer in Banaskantha District came to be

transferred by an order 08-02-1988. The petitioner was transferred from place called Dama to village Duva by the said order dated 08-02-1988. From the perusal of the averments made in the petition, it can be seen that such transfer of the petitioner led to series of subsequent administrative orders and transfers. Full details of such orders are not necessary to be made part of this order. Suffice it to say that the petitioner though was transferred to various places; on account of administrative difficulties such as the person posted at the transferred place not vacating the post and giving the charge, the petitioner had to face difficulties in discharging of his duties. Be that as it may be, the issue with which the present petition is concerned directly arose with his transfer order dated 08-09-1989 by which the petitioner was transferred to a place called Ganjishar. The petitioner carried a feeling that the said transfer ought not to have restored to. It was his case that he never prayed for being transferred to such a place and his representation was for being transferred to some other place. He therefore, made representation to the authorities and according to him, he was also given an oral assurance that he would be posted somewhere near

Deesa, the place of his preferred choice. The petitioner in turn was transferred yet again on 06-12-1989 to a place called Aseda and thereafter, by another order dated 03-02-1990 to a place called Totana. In the meantime the petitioner had filed Special Civil Application No.422/1990 challenging inter-alia his transfer order dated 03-02-1990, transferring him from Aseda to village Totana. However, by order dated 16-04-1990, the Learned Single Judge turned down the challenge of the petitioner against his transfer. The petitioner eventually therefore, reported to duty at Totana on 17-04-1990. The petitioner remained absent from duty for a period between 13-09-1989 to 16-04-1990.

4. The respondents therefore, treated the entire period of 221 days as break in service and refused to pay the salary to the petitioner for the said period. This action of the respondents aggrieved the petitioner so as to file the present petition.

5. As noted earlier with the intervention of the Court, part of the grievance of the petitioner has been resolved. The respondents have granted the benefits of

the said period for the purpose of pensionary benefits to be granted to the petitioner upon his retirement. The petitioner however, insists on being paid the salary for the entire period. The learned advocate Shri Vaishya submitted that the petitioner was being harassed and tossed from one place to another. In the past though the petitioner was ready to discharge his duties at the place of transfer, he was prevented from doing so on account of the incumbent to the place not vacating the post and handing over the charge. He submitted that the petitioner never requested for being transferred to Ganjishar and the respondents ought not have resorted to such transfer. He submitted that the petitioner had valid reasons for not discharging his duties. He placed reliance on the decision of the Hon'ble Supreme Court in the case of Burn Standard Co. Ltd. v. Tarun Kumar Chakaborty reported in (2002) 10 SCC 585 in which the Hon'ble Supreme Court held that in a case where the request of the employee for withdrawal of notice for voluntary retirement was wrongly rejected, principle of “no work no pay” would have no application.

6.On the other hand learned AGP Ms. Raval opposed the

petition. She submitted that the petitioner has not discharged duties though his service was acutely required being a Medical Officer. She submitted that the petitioner at any rate cannot seek salary for the period in question.

7. Having heard the learned advocates appearing for the parties, I find that the claim of the petitioner for the salary for the period in question is not justified. It does appear to me that in the past there were some administrative difficulties and there may even have been some administrative mess-up which led to the petitioner being tossed from one place to another, same however would not justify the petitioner not reporting for the duty at the place of transfer. The petitioner did not report for the duty nor did he discharge his duties for the entire period between 13-09-1989 to 16-04-1990 without valid reasons. The challenge of the petitioner to his transfer was not allowed by this Court. In any case during the entire period, the petitioner did not enjoy any stay from any Court. The petitioner was therefore, required to discharge his duties at the place of transfer. He failed to do so. He obviously therefore, cannot seek salary for the period

in question. The prayer of the petitioner is therefore, rejected. The rejection of the petition however, would not permit the respondents to alter the position for treating the period in question for the purpose of pensionary benefits.

8. Subject to above observations, the petition is rejected. Rule is discharged with no order as to costs.

(Akil Kureshi,J.)

(raghu)